

<p>1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF ARKANSAS TEXARKANA DIVISION 3 CRAIG SHIPP PLAINTIFF 4 CASE NO. 4:18-CV-04017-SOH 5 V. 6 7 KIMBERLY HOFFMAN, et al. DEFENDANTS 8 9 ***** 10 ORAL DEPOSITION 11 OF 12 KINDALL SMITH 13 MARCH 29, 2019 14 VOLUME 1 15 ***** 16 ORAL DEPOSITION OF KINDALL SMITH, produced as a 17 witness at the instance of the PLAINTIFF, CRAIG SHIPP, 18 and duly sworn, was taken in the above-styled and 19 numbered cause on the 29th day of March, 2019, from 9:16 20 a.m. to 10:47 a.m., before LEICA TURNER, a Certified 21 Shorthand Reporter in and for the State of Texas, 22 reported by machine shorthand, at the offices of Leigh &amp; 23 Associates Court Reporting, 3930 Galleria Oaks Drive, 24 Suite 159, Texarkana, Texas, pursuant to the Federal 25 Rules of Civil Procedure and the provisions stated on the record or attached hereto.</p>	<p>3 1 I N D E X 2 WITNESS: KINDALL SMITH 3 4 Appearances ..... 2 5 6 Changes and Signature ..... 68 7 Reporter's Certificates ..... 70 8 9 Examination by Mr. Franseen ..... 4 10 Examination by Mr. Odum ..... 58 11 Examination by Mr. Franseen ..... 60 12 Examination by Mr. Odum ..... 66 13 14 15 16 17 E X H I B I T I N D E X 18 19 EXHIBIT PAGE 20 NO. DESCRIPTION MARKED 21 1 ..... 25 22 Medical Records 23 (Bates CCS 536 - CCS 590) 24 25 2 ..... 26 Arkansas Department of Correction Medical Restrictions/Limitations/ Special Authorization(s) (Bates CCS 792)</p>
<p>2 1 A P P E A R A N C E S 2 FOR THE PLAINTIFF CRAIG SHIPP: 3 MR. DEREK S. FRANSEEN 4 WALSH &amp; FRANSEEN 5 200 East 10th Street Plaza 6 Edmond, Oklahoma 73034 7 Phone: 405.843.7600 8 Fax: 405.606.7050 9 dfranseen@walshlawok.com 10 FOR THE MEDICAL DEFENDANTS: 11 MS. MICHELLE BANKS ODUM 12 HUMPHRIES, ODUM &amp; EUBANKS 13 1901 Broadway Street 14 Little Rock, Arkansas 72206 15 Phone: 501.420.1776 16 michelle@humphrieslaw.net 17 18 FOR THE ADC DEFENDANTS: 19 MS. ROSALYN MIDDLETON 20 ASSISTANT ATTORNEY GENERAL 21 CIVIL DEPARTMENT 22 323 Center Street 23 Suite 200 24 Little Rock, Arkansas 72201 25 Phone: 501.682.8122 Fax: 501.682.2591 rosalyn.middleton@arkansasag.gov  ALSO PRESENT: Ms. Melissa Stoner Ms. Diane Cunningham</p>	<p>4 1 P R O C E E D I N G S 2 (All parties present have hereby waived the 3 introductory reading by the 4 deposition officer as required by Rule 30(b)(5).) 5 KINDALL SMITH, 6 having been first duly cautioned and sworn, testified as 7 follows: 8 9 EXAMINATION 10 BY MR. FRANSEEN: 11 Q. Please state your full name. 12 A. Kindall Nicole Smith. 13 Q. Have you gone by any other names? 14 A. Kindall Nicole Hammonds. 15 Q. How do you spell Hammonds? 16 A. H-a-m-m-o-n-d-s. 17 Q. And when did you switch from Hammonds to 18 Smith? 19 A. 2006. 20 Q. Were you practicing as a nurse under 21 Hammonds? 22 A. Yes. 23 Q. When did you -- just kind of briefly give me 24 your educational background. 25 A. I graduated high school in 1996; started LVN school in February of 2003 -- no, excuse me, August; and</p>

<p style="text-align: right;">13</p> <p>1 A. Explain that.</p> <p>2 Q. I assume that CCS -- and I'm going to refer to</p> <p>3 that -- those three entities as CCS for purposes of</p> <p>4 today. I assume if you have any issues with either</p> <p>5 substandard care or if they're critical of any care that</p> <p>6 you provide to a patient, they will write you up or give</p> <p>7 you some sort of reprimand, verbal or written; is that</p> <p>8 correct?</p> <p>9 A. So are you saying like harm?</p> <p>10 Q. It doesn't necessarily have to be harm, just</p> <p>11 something where they're critical of your job performance</p> <p>12 as related to a patient.</p> <p>13 A. No.</p> <p>14 Q. Have you ever been written up for any other</p> <p>15 reason at CCS?</p> <p>16 A. Attendance.</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. What all correctional facilities have you</p> <p>20 worked for with CCS?</p> <p>21 A. Just Southwest Arkansas Community Corrections.</p> <p>22 Q. And sometimes is that also referred to as</p> <p>23 SWACC?</p> <p>24 A. Yes.</p> <p>25 Q. What did you review in preparation of this</p>	<p style="text-align: right;">15</p> <p>1 to a sick call which would be an issue I guess they</p> <p>2 would be having that they would need to be seen by a</p> <p>3 nurse.</p> <p>4 Q. And so they go to Medical and they're</p> <p>5 notifying Medical of an issue that they're having?</p> <p>6 A. Yes.</p> <p>7 Q. Do you believe a sick call is something more</p> <p>8 pressing than just a medical request generally?</p> <p>9 A. Yes.</p> <p>10 Q. You think that's an adequate way for the</p> <p>11 prisoner to notify Medical of an issue that they're</p> <p>12 having?</p> <p>13 A. Is your question through sick call?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 Q. It's appropriate for them to either fill out a</p> <p>17 medical request or go to sick call and get checked out</p> <p>18 there directly?</p> <p>19 A. Not a request. They would not be seen for a</p> <p>20 sick call issue.</p> <p>21 Q. But if they have an issue, they can either</p> <p>22 fill out the request or go to sick call?</p> <p>23 A. No.</p> <p>24 Q. So if someone has a medical issue, they can't</p> <p>25 fill out a request for it?</p>
<p style="text-align: right;">14</p> <p>1 deposition?</p> <p>2 A. The records.</p> <p>3 Q. Are you referring --</p> <p>4 A. Medical records.</p> <p>5 Q. Are you referring to Mr. Shipp's records?</p> <p>6 A. Yes.</p> <p>7 Q. I am going to hand you a set of records.</p> <p>8 They're Bates stamped as CCS 536 through CCS 590. Do</p> <p>9 you recognize these records?</p> <p>10 A. Yes.</p> <p>11 Q. What are they?</p> <p>12 A. They are his medical records.</p> <p>13 Q. Looking at CCS 536, can you identify what this</p> <p>14 encounter note is?</p> <p>15 A. This was his sick call that I seen him on</p> <p>16 February 5th.</p> <p>17 Q. Of which year?</p> <p>18 A. 2016.</p> <p>19 Q. And would a sick call be the same as a medical</p> <p>20 request?</p> <p>21 A. No.</p> <p>22 Q. What's the different procedure for having a</p> <p>23 sick call versus a medical request?</p> <p>24 A. A medical request is where they are requesting</p> <p>25 a blood pressure check, something that would not pertain</p>	<p style="text-align: right;">16</p> <p>1 A. Not if it is something that has to be seen as</p> <p>2 a sick call protocol.</p> <p>3 Q. If you are wanting to notify Medical of an</p> <p>4 issue while at sick call as far as needing some sort of</p> <p>5 medical device, is it appropriate for them to verbally</p> <p>6 communicate that to the medical staff?</p> <p>7 A. If it's pertaining to their sick call, yes,</p> <p>8 they can make the request at that time.</p> <p>9 Q. Let's just go through this encounter note.</p> <p>10 There are different sections here; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. What is the -- what is the first section?</p> <p>13 A. It's subjective. It's what they fill out for</p> <p>14 their sick call.</p> <p>15 Q. What was his subjective complaint?</p> <p>16 A. His deformed feet and toes due to his Charcot</p> <p>17 joint and also diabetes.</p> <p>18 Q. What is the next section?</p> <p>19 A. It's your objective.</p> <p>20 Q. Let's go through this sentence by sentence.</p> <p>21 Let's have you read the first sentence.</p> <p>22 A. It says, "'Upon resident taking his shoes off,</p> <p>23 his left sock noted to be covered in blood."</p> <p>24 Q. Is that something you observed?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">17</p> <p>1 Q. Is that an issue with someone with diabetes?</p> <p>2 A. Yes.</p> <p>3 Q. What's the next sentence?</p> <p>4 A. "Bilateral feet have deformities noted."</p> <p>5 Q. What were the deformities noted?</p> <p>6 A. He had the knots from the Charcot foot.</p> <p>7 Q. Those were something you observed?</p> <p>8 A. Yes.</p> <p>9 Q. Next sentence?</p> <p>10 A. "Left foot has an open area about the size of</p> <p>11 a silver dollar with skin only attached by the corner."</p> <p>12 Q. When you describe open area, what are you</p> <p>13 describing?</p> <p>14 A. Where the skin is loose, open.</p> <p>15 Q. Is it a sore?</p> <p>16 A. Yes.</p> <p>17 Q. With someone with diabetes, what are the</p> <p>18 concerns with someone developing a sore on their feet?</p> <p>19 A. Infection, not healing.</p> <p>20 Q. Do you know what diabetics generally do in</p> <p>21 order to -- if they have a Charcot joint -- to prevent</p> <p>22 sores from forming?</p> <p>23 A. It would be offloading the pressure of the</p> <p>24 joint or the -- the deformity.</p> <p>25 Q. And what's one of the -- one of the ways they</p>	<p style="text-align: right;">19</p> <p>1 Q. Were you concerned for Mr. Shipp's foot upon</p> <p>2 seeing it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you believe that a doctor should have done</p> <p>5 an appropriate evaluation and treatment for that foot at</p> <p>6 that time?</p> <p>7 A. I can't answer for her.</p> <p>8 Q. Read the next sentence there for me.</p> <p>9 A. "The area was cleaned with wound cleanser,</p> <p>10 TAO," triple antibiotic ointment, "applied, and then</p> <p>11 covered with 2x2s and roll kerlix."</p> <p>12 Q. Was that performed by you or Dr. Lemdja?</p> <p>13 A. By me.</p> <p>14 Q. Next sentence?</p> <p>15 A. "Resident will return to Medical daily for a</p> <p>16 PM treatment -- or PM treatment after showers to have</p> <p>17 dressing changed (sic)."</p> <p>18 Q. And did someone prescribe that or is that</p> <p>19 something you recommended?</p> <p>20 A. That was Dr. Lemdja.</p> <p>21 Q. Next sentence?</p> <p>22 A. "The unit MD gave orders for antibiotics</p> <p>23 Clindamycin 300 QID times 14 days. The unit" -- oh.</p> <p>24 Q. You can go to the next sentence.</p> <p>25 A. "The Unit MD also instructed resident to</p>
<p style="text-align: right;">18</p> <p>1 can offload the pressure?</p> <p>2 A. His shoes that he said he had; a wheelchair.</p> <p>3 Q. The shoes he said he had, what are you talking</p> <p>4 about?</p> <p>5 A. The shoes that he said he was prescribed in</p> <p>6 the free world for his issue.</p> <p>7 Q. The shoes that his family had in their</p> <p>8 possession at this time?</p> <p>9 A. I don't know whose possession they were in at</p> <p>10 that time.</p> <p>11 Q. Read the next sentence, please.</p> <p>12 A. "Resident has already had his left great toe</p> <p>13 removed four to five years ago from infection that went</p> <p>14 to the bone."</p> <p>15 Q. Was that observable by you?</p> <p>16 A. Yes.</p> <p>17 Q. Next sentence?</p> <p>18 A. "Unit MD here. Skin was removed by MD."</p> <p>19 Q. Who was the unit MD?</p> <p>20 A. It was Dr. Lomax -- Dr. Lemdja that day.</p> <p>21 Q. Why did Dr. Lemdja get involved in this?</p> <p>22 A. Because he was a diabetic, his foot was</p> <p>23 bleeding, and he had an open sore.</p> <p>24 Q. Did you notify Dr. Lemdja?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">20</p> <p>1 notify his family of ordering him a pair of shoes to be</p> <p>2 sent in from the manufactory (sic)."</p> <p>3 Q. And next sentence.</p> <p>4 A. "His right foot was assessed. There was no</p> <p>5 open areas at that time."</p> <p>6 Q. Do you know whether the family can send in</p> <p>7 orthotic shoes without approval?</p> <p>8 A. No.</p> <p>9 Q. Is that, no, they can't or no --</p> <p>10 A. No, they had to be approved.</p> <p>11 Q. How are orthotic shoes approved by CCS or the</p> <p>12 facility here?</p> <p>13 A. The doctor sees a need for them. She can</p> <p>14 request that. If he has them, it is requested and it</p> <p>15 has to go through the warden and he has to approve for</p> <p>16 any outside items to be brought into the facility.</p> <p>17 Q. Is that your understanding as far as the</p> <p>18 appropriate protocol in February of 2016?</p> <p>19 A. Through Medical?</p> <p>20 Q. Whatever the -- whatever the resident has to</p> <p>21 do or the patient has to do at that time in order to</p> <p>22 receive their prescribed orthotics.</p> <p>23 A. It would be facility policy.</p> <p>24 Q. How was the warden notified?</p> <p>25 A. When the nurse would get the order, she would</p>

<p style="text-align: right;">25</p> <p>1 Q. I'm going to -- well, let's go ahead and Bates 2 stamp that first section as Exhibit 1 -- or mark it as 3 Exhibit 1. So the record is clear here, it's CCS 536 4 through CCS 590. 5 (Exhibit No. 1 marked) 6 Q. I'll hand you the second document here, CCS 7 792. Are you familiar with that document? 8 A. Yes. 9 Q. What does that document generally do? 10 A. It's Medical Restrictions/Limitations/Special 11 Authorizations. 12 Q. And is that filled out in accordance with the 13 doctor's orders that -- I guess what date is that 14 from? 15 A. 2/5/16. 16 Q. Is that something that would have been filled 17 out in accordance with the doctor's orders that we 18 discussed on that encounter note on CCS 536? 19 A. Yes. 20 Q. What is that document trying to reflect as far 21 as her orders? 22 A. This would be for his temporary elevator pass. 23 Q. Anything else? 24 A. No. 25 Q. Okay. I'm going to mark that document as</p>	<p style="text-align: right;">27</p> <p>1 Q. That's correct, she didn't order any 2 restrictions? 3 A. No. 4 Q. Did she order any restrictions? 5 A. Yes. 6 Q. What restrictions did she order? 7 A. A temporary elevator pass. 8 Q. Okay. So outside of using the elevator when 9 changing floors, did she order any other restrictions? 10 A. No. 11 Q. Did she order -- did she order that temporary 12 elevator pass or did you put in place that temporary 13 elevator pass? 14 A. It was a verbal order from her. 15 Q. People who are at SWACC, do they go through 16 any sort of physical programs as far as what they do in 17 the morning, something along those lines? 18 A. I don't know. 19 Q. Do you know whether they do any kind of 20 calisthenics or something as far as part of their 21 treatment program? 22 A. Explain that. 23 Q. Jumping jacks, any sort of physical 24 activities? 25 A. I wouldn't know what security has them do.</p>
<p style="text-align: right;">26</p> <p>1 Exhibit 2. 2 MS. ODUM: What was that page number 3 again? I'm sorry. 4 MR. FRANSEEN: CCS 792. 5 (Exhibit No. 2 marked) 6 Q. If Dr. -- that document on Exhibit 2, it has a 7 couple of asterisks next to a couple of items, right? 8 A. Uh-huh. 9 Q. Is that a "yes"? 10 A. Yes. 11 Q. Are those asterisks on that document even 12 before it's filled out? 13 A. Yes. 14 Q. If Dr. Lemdja testified that she ordered bed 15 rest on February 5, 2016, is she telling the truth? 16 MS. ODUM: Object to form. 17 A. This does not reflect -- she did not tell me 18 to give him bed rest. 19 Q. So either on the encounter note or the medical 20 restrictions note, she did not order bed rest? 21 A. No. 22 Q. She also did not order any restrictions from 23 any activities Mr. Shipp would have been performing as 24 part of the program, correct? 25 A. Yes.</p>	<p style="text-align: right;">28</p> <p>1 Q. Do they have to do any sort of walking-around 2 tasks throughout the day? 3 A. Yes. 4 Q. What type of tasks do you know they have to 5 do? 6 A. I guess they go to chow. 7 Q. And so just kind of back during their -- back 8 in the security area, you're just not familiar with what 9 they do? 10 A. No. 11 Q. Dr. Lemdja did not prescribe him with a 12 wheelchair on February 5, 2016? 13 A. No. 14 Q. That would be reflected in either the 15 encounter note or the restrictions? 16 A. Correct. 17 Q. Can you read me the three restrictions at the 18 top of this form on Exhibit 2? 19 A. "Restrict from assignment requiring strenuous 20 physical activity in excess of hours per day. Allow 10 21 minutes break after each hour." 22 Q. That's not checked? 23 A. No. 24 Q. Next one? 25 A. "Restrict from assignments requiring prolonged</p>

<p style="text-align: right;">61</p> <p>1 order the orthotics, the fact that the word "order"</p> <p>2 there, does that kind of hinge on whether that's part of</p> <p>3 your job?</p> <p>4 A. That is not part of my job to order a medical</p> <p>5 device. That has to be ordered by a physician.</p> <p>6 Q. As an LVN and as your training with SWACC, did</p> <p>7 you think Mr. Shipp on February 5th needed his orthotic</p> <p>8 ordered?</p> <p>9 A. He and Dr. Lemdja had discussed that and she</p> <p>10 told him to contact his family to receive his shoes.</p> <p>11 Q. But you know the policy for him to receive</p> <p>12 those is it has to be ordered by Dr. Lemdja and approved</p> <p>13 by the warden?</p> <p>14 A. So he would have had to have wrote his family</p> <p>15 to see if they would send them and then have it approved</p> <p>16 by the warden.</p> <p>17 Q. But Dr. Lemdja or some doctor there has to</p> <p>18 order it for it to be approved, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And on February 5th, it could have been</p> <p>21 ordered and approved by Dr. Lemdja?</p> <p>22 A. Yes.</p> <p>23 Q. Did you have any conversation with her</p> <p>24 regarding whether the orthotic needed to be ordered and</p> <p>25 documented as being approved?</p>	<p style="text-align: right;">63</p> <p>1 A. I do not order it. I do not say that it needs</p> <p>2 to be ordered. That is the physician's call.</p> <p>3 Q. Right. That's the first step. The second</p> <p>4 step is if it's ordered, you notify HSA?</p> <p>5 A. If the doctor says, yes, I'm going to order</p> <p>6 it, then, yes, HSA would be notified.</p> <p>7 Q. So because the first step was not done by</p> <p>8 Dr. Lemdja, you did not notify the HSA of the need of an</p> <p>9 orthotic being approved?</p> <p>10 A. No, because I didn't have an order form.</p> <p>11 Q. And on that date, did you think to yourself</p> <p>12 this should be ordered and the HSA should be notified?</p> <p>13 MS. ODUM: Object to form.</p> <p>14 A. He was told to order them so -- or to notify</p> <p>15 his family.</p> <p>16 Q. Notifying his family is not ordering and</p> <p>17 approving the medical device, is it?</p> <p>18 A. But he had to have it approved. His family</p> <p>19 would send them.</p> <p>20 Q. Notifying the family is not ordering and</p> <p>21 approving the medical device?</p> <p>22 MS. ODUM: Object to form.</p> <p>23 A. I don't order and approve anything.</p> <p>24 Q. Do you know when Dr. Lomax, 11 days later and</p> <p>25 a second sore had formed on his other foot, whether she</p>
<p style="text-align: right;">62</p> <p>1 A. I did not speak with her on that.</p> <p>2 Q. Did you leave that just within her general</p> <p>3 purview and her decision making?</p> <p>4 A. That was her decisions, yes.</p> <p>5 Q. Did you think to yourself maybe this should be</p> <p>6 documented?</p> <p>7 A. I documented that she told him that they had</p> <p>8 discussed the shoes and she told him to notify his</p> <p>9 family.</p> <p>10 Q. Did you think to yourself maybe this needs to</p> <p>11 be ordered and actually documented as far as being</p> <p>12 approved?</p> <p>13 A. No, because I don't order devices.</p> <p>14 Q. And so did you think to yourself maybe I</p> <p>15 should notify the HSA at that time?</p> <p>16 A. I didn't have a doctor's order.</p> <p>17 Q. Without a doctor's order, were you sitting</p> <p>18 there going I wish I had a doctor's order now, that way</p> <p>19 I could notify HSA so this could get approved?</p> <p>20 MS. ODUM: Object to form.</p> <p>21 A. If the doctor didn't say I'm going to order</p> <p>22 him to have his shoes, no, I would not have went to the</p> <p>23 HSA.</p> <p>24 Q. Because your policies and procedures are if</p> <p>25 the doc doesn't order it, you don't do anything?</p>	<p style="text-align: right;">64</p> <p>1 had the device there in order to approve and order it?</p> <p>2 A. What date was that she seen him?</p> <p>3 Q. February 16th.</p> <p>4 A. And your question is?</p> <p>5 Q. You're telling me that the policy and</p> <p>6 procedures is device has to be there before it can be</p> <p>7 approved by a doctor, is that your understanding?</p> <p>8 A. The doctor has to write an order for it.</p> <p>9 Q. Right. So notifying --</p> <p>10 A. And then I'm assuming him and Dr. Lomax had</p> <p>11 talked about them. I don't know what the conversation</p> <p>12 was. And he was told to contact his family and that is</p> <p>13 what I documented. That was between him and Dr. Lemdja.</p> <p>14 Q. Dr. Lemdja on the 5th?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Is that a "yes"?</p> <p>17 A. Yes.</p> <p>18 Q. And do you believe Dr. Lemdja knew that for a</p> <p>19 medical device to be approved, she has to order it?</p> <p>20 A. Yes.</p> <p>21 Q. And she did not order it on that date?</p> <p>22 A. There's no order, no.</p> <p>23 Q. And you knew on that date that in order for</p> <p>24 those shoes to get approved and come into the facility,</p> <p>25 a doctor had to order it for you to notify the HSA?</p>